

The Judicial Conduct Board adopted a Statement of Policy Regarding Electronic Communications, effective October 5, 2016.

**JUDICIAL CONDUCT BOARD STATEMENT OF POLICY
REGARDING ELECTRONIC COMMUNICATIONS**

The Code of Judicial Conduct (Code) and the Rules Governing Standards of Conduct of Magisterial District Judges (Rules) were adopted by the Supreme Court in 2014. With the recent series of misconduct claims against judges regarding their use of electronic communications, the Board thought it appropriate to provide guidance on the topic of a judicial officer's use of electronic communications technology and its implications under the Code, the Rules, and the Pennsylvania Constitution. Many judicial officers at all levels of Pennsylvania's judiciary have asked questions relating to the Board's investigation of alleged judicial misconduct related to the use of electronic communications. For this reason, the Board adopted this "Statement of Policy" which sets forth the Board's tentative intention with respect to how it will interpret and enforce the Code, the Rules, and the Constitution with respect to allegations of judicial misconduct stemming from the use of electronic communications in the future. While the Board seeks to provide guidance with the issuance of this Statement of Policy, it is noted that the Statement of Policy does not have the force

and effect of law and is binding on neither the members of the judiciary nor the Board.

SECTION I – DEFINITIONS

“Board counsel.” Chief Counsel, Deputy Chief Counsel, deputy counsel, assistant counsel, and any special counsel retained by the Board. The term also encompasses any investigator assigned by counsel to investigate a particular case.

“Electronic Communications.” Messages, their content, and any attached media distributed by electronic means from a person or persons utilizing a privately-owned or government-provided computer or other electronic device to one or more recipients *via* any network. As used by this Policy, the term includes, but is not limited to, emails, social media communications, postings in internet chatrooms, internet forums, and internet message boards, “blogging,” communication by applications or “apps,” text messages, and any other electronic communication disseminated by the use of a computer or other electronic device which, in whole or in part, requires a writing. The term does not include two-way aural communication.

“Illegal.” The term includes all activity prohibited by the criminal or civil laws of the Commonwealth of Pennsylvania or the United States. The term includes, but is not limited to, instances where such conduct

has resulted in an investigation of a judicial officer or judicial candidate by another agency, a criminal conviction, a finding of civil liability, or any other adjudication.

“Inappropriate.” Material that is offensive to a viewer of ordinary and reasonable sensibilities. The term includes, but is not limited to, material that constitutes: legal pornography; sexually-suggestive content, including suggestive depictions of nudity short of pornography; stereotypical depictions of gender, including misogynistic material and material that relates to domestic violence, gender identity or expression, religion, sexual orientation, socioeconomic status, race or ethnicity.

“Misconduct perpetrated by electronic communications.” *Prima facie* misconduct that is supported by sufficient evidence such that the Board may conclude that there is probable cause of judicial misconduct committed by a judge through his or her use of electronic communications.

“*Prima facie* misconduct.” Conduct that, if true, would, on its face, constitute a violation of the Pennsylvania Constitution, Code of Judicial Conduct, Rules Governing Standards of Conduct of Magisterial District Judges, or an Order of the Supreme Court. The term includes, but is not limited to, improper *ex parte* communications, illegal conduct,

improper partisan political activity, improper judicial comment on pending cases, membership in discriminatory organizations, and manifestations of bias.

SECTION II - GENERAL OVERVIEW

A. Investigation Scope and Limitations Period:

1. Generally, the scope of board counsel's investigation will comply strictly with Judicial Conduct Board Rule of Procedure 15.¹
2. Board counsel will investigate a complaint about a judge's electronic communications activity if it occurred while the individual was a judge or while the individual was a candidate for judge.
3. If the electronic communications activity pre-dated the individual being a judge or a candidate for judge,

¹ Judicial Conduct Board Rule of Procedure 15, entitled "Time Limitations," states the following:

Except where the Board determines otherwise for good cause, the Board shall not consider complaints arising from acts or omissions occurring more than four years prior to the date of the complaint, provided however, that when the last episode of an alleged pattern of recurring judicial misconduct arises within the four-year period, the Board may consider all prior acts or omissions related to such an alleged pattern of conduct.

board counsel will investigate the complaint only if the alleged electronic communications activity relates to the honesty, trustworthiness, integrity, or fitness of the individual to serve as a judge.

B. Disposition:

When determining the appropriate disposition for a complaint, the Board will consider the following factors:

1. Whether the *prima facie* misconduct alleged constitutes misconduct perpetrated by electronic communications.
2. Whether the electronic communications constitute illegal conduct.
3. The degree of the judge's knowledge of and participation in electronic communications containing inappropriate or illegal content or misconduct perpetrated by electronic communications, and the judge's response, if any, to receiving such electronic communications. Relevant considerations include, but are not limited to the following:

- a. Whether the judge was a sender, forwarder, or had exchanged, *i.e.*, sent and received, and/or forwarded, illegal or inappropriate electronic communications, or misconduct perpetrated by electronic communications;
- b. Whether the judge was only a recipient of illegal or inappropriate electronic communications, or misconduct perpetrated by electronic communications;
- c. Giving weight to the relevant facts and circumstances in a particular case, whether the judge took any reasonable steps in response to receiving inappropriate or illegal electronic communications or misconduct perpetrated by electronic communications; and
- d. If necessary, whether the judge reported inappropriate or illegal electronic

communications or misconduct perpetrated by electronic communications to any appropriate criminal, investigatory, or administrative authority.

4. The frequency of any inappropriate or illegal electronic communications, and the frequency of any misconduct perpetrated by electronic communications.
5. The degree of offensiveness of the electronic communications to a viewer of ordinary and reasonable sensibilities, and its potential effects on the independence, integrity, and impartiality of the judiciary, and the public's confidence in the judiciary.
6. The nature of the illegality of any electronic communications, and its potential effects on the independence, integrity, and impartiality of the judiciary, and the public's confidence in the judiciary.
7. The nature of any misconduct perpetrated by electronic communication, and its potential effects on the independence, integrity, and impartiality of the judiciary, and the public's confidence in the judiciary.

8. Any other factor relevant to the Board's disposition discussed in Board OP 8.01.